104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 104–192

SAN DIEGO COASTAL CORRECTIONS ACT OF 1995

JULY 18, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1943]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1943) to amend the Federal Water Pollution Control Act to deem certain municipal wastewater treatment facilities discharging into ocean waters as the equivalent of secondary treatment facilities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

The purpose of H.R. 1943 is to provide a waiver from secondary treatment requirements for the Point Loma Wastewater Treatment Facility which treats sewage for the metropolitan sewage system that serves much of San Diego County, provided that the facility's discharge continues to meet the safeguards provided in the bill.

NEED FOR LEGISLATION

The Clean Water Act generally requires that publicly owned treatment words in coastal areas, like the Point Loma Wastewater Treatment Facility in San Diego, achieve secondary treatment of their municipal sewage discharges. Secondary treatment generally means removal of 85% or more of total suspended solids (TSS) and

99–006

biochemical oxygen demand (BOD), or thirty-day average concentrations of TSS and BOD of 30 mg/l, whichever standard is more restrictive. A small number of communities have received limited, conditional waivers from secondary treatment under section 301(h).

The cost of achieving secondary treatment alone for the Point Loma Wastewater Treatment Facility in San Diego is conservatively estimated to exceed $2 billion. The City's current estimate of the total cost of the wastewater treatment plan (which includes an extensive wastewater reclamation program and construction of secondary treatment facilities) that San Diego negotiated with EPA after the agency sued the City in 1988 for failure to achieve secondary treatment is $4.9 billion. In contrast, the City's estimate of the costs of its current wastewater treatment plan (which includes a more limited reclamation program and will require a waiver of secondary treatment) is $1.49 billion.

In 1993, the National Research Council of the National Academy of Sciences issued a report, ''Managing Wastewater in Coastal Urban Areas.'' This report included findings that are relevant to the issue of whether secondary treatment is necessary to protect the ocean environment from San Diego's discharges. Specifically, the Council found that (1) BOD generally is not an ecological concern in the ocean or in open coastal waters and (2) chemically-enhanced primary treatment has been successfully used to increase the removal of suspended solids, achieving 80 to 85% removal with low doses of chemicals. In addition, thirty scientists from the Scripps Institution of Oceanography have signed a consensus statement expressing their belief that problems in well flushed coastal waters will not be substantially alleviated or corrected by the wholesale conversion of treated sewage from primary to secondary treatment, opposing the automatic requirement that all sewage treatment facilities employ secondary treatment. Finally, in 1994, a federal district court judge found that the scientific evidence without dispute establishes that the marine environment is not harmed by San Diego's discharge. Based on such information, Congress passed and the President signed the Ocean Pollution Reduction Act of 1994. This allowed San Diego the opportunity to present a new application to EPA for a waiver from secondary treatment requirements under section 301(h) of the Clean Water Act.

On June 12, 1995, EPA announced a preliminary determination to approve San Diego's request for a section 301(h) waiver. EPA's action, if finalized, will provide a limited, temporary waiver and San Diego will have to seek renewal every five years. According to the City of San Diego, its waiver application cost $1.2 million to prepare. San Diego expects that each subsequent application for renewal of the waiver could cost the San Diego ratepayers an additional $1 million or more.

An application for renewal of the secondary treatment waiver is not necessary to ensure continued compliance by San Diego with protective treatment standards or to provide an opportunity for public review. Under H.R. 1943, the Point Loma Wastewater Treatment Facility must comply with all local and State water quality standards. Thus, the Committee intends San Diego to comply with the California State Ocean Plan as a condition of the exemption

from secondary treatment, whether the City's outfall discharges into State or federal waters. The discharge also must be subject to an ocean monitoring program and requires a Clean Water Act discharge permit.

Data from San Diego's extensive, $4.5 million per year, monitoring program are publicly available. Permit requirements are enforceable through citizen suits. And, permit renewals are subject to public notice and comment. Accordingly, under H.R. 1943 there will be ample opportunity for public oversight and input regarding the discharge from the Point Loma Wastewater Treatment Facility.

Based on the scientific evidence and its review of San Diego's treatment system and extensive Ocean Monitoring Program reports, the California Environmental Protection Agency fully supports a legislative exemption from secondary treatment for San Diego.

Discussion of Committee Bill

H.R. 1943 amends section 304(a) of the Federal Water Pollution Control Act to provide that the discharge from the Point Loma Wastewater Treatment Plant be deemed to be equivalent to secondary treatment, provided that the safeguards in the bill are met. These safeguards require that San Diego's discharges (1) be subject to chemically enhanced primary treatment; (2) be discharged through an ocean outfall greater than 4 miles offshore; (3) be in compliance with all local and State water quality standards for receiving waters; and (4) be subject to an ocean monitoring program.

The Ocean Pollution Reduction Act of 1994, which gave San Diego the opportunity to apply for a section 301(h) waiver from secondary treatment, imposes additional conditions not included in H.R. 1943. Specifically, the Ocean Pollution Reduction Act of 1994 requires San Diego to (1) construct water reclamation facilities that will reclaim 45 million gallons of wastewater per day by the year 2010; (2) remove 80% of total suspended solids (TSS) on a monthly basis and 58% of biochemical oxygen demand (BOD) on an annual basis; and (3) reduce TSS released to the ocean during the period of permit modification. Based on volumes of scientific findings, as well as the views of state and local officials, the Committee believes these additional conditions are unnecessary for the protection of human health and the environment.

First, requiring greater wastewater reclamation capacity than San Diego can use economically is a waste of energy and scarce financial resources. San Diego already has begun construction of a wastewater reclamation project tailored to the City's needs and budget. The North City Water Reclamation Project, which includes a treatment plant, pipelines, and a reclaimed water distribution system, is an approximately $300 million project that will treat 30 million gallons of wastewater per day and will begin operation in 1997. San Diego also is designing a 7 million gallon per day water reclamation project to serve the South Bay area of the City, at a cost of approximately $100 million. This project is scheduled to go into operation in 2000.

Second, under H.R. 1943, the numerical standards that must be met by San Diego's discharges will be provided by local and State water quality standards. Although the Point Loma Wastewater

Treatment Plant outfall is 4.5 miles off the coast of California in federal waters, H.R. 1943 requires discharges from this outfall to comply with local and State water quality standards for the receiving waters. With this condition, the Committee intends to require San Diego's discharges to comply with the California State Ocean Plan and any requirements San Diego has set for its coastal waters, even though these requirements might not otherwise be applicable to a discharge into federal waters.

Unlike the Ocean Pollution Reduction Act of 1994, the California State Ocean Plan has no BOD standard for deep ocean outfalls because scientists agree that BOD is not a meaningful measurement in the ocean. As noted by Judge Brewster of the Southern District of California in a March 1994 decision rejecting a consent decree that would have placed a BOD limit on San Diego's discharge: "BOD is irrelevant in deep ocean discharges because of the massive abundance of oxygen in the ocean."

The California State Ocean Plan has a 75% (rather than 80%) TSS standard. However, unlike the Ocean Pollution Reduction Act, the State Plan also has numerical standards for over 200 metals, toxics and other specific contaminants, in addition to the generic requirement of percent removal of solids. As noted by the National Research Council in its 1993 report, the California State Ocean Plan provides an environmental quality driven approach to managing risks to human health and the environment, the approach which is recommended by the Council.

Third, the requirement of the Ocean Pollution Reduction Act of continuing TSS reductions could eventually drive the City to secondary treatment, with its enormous price tag.

HEARINGS AND PREVIOUS LEGISLATIVE ACTIVITY

During February and March of 1995, the Subcommittee on Water Resources and Environment held seven hearings on the subject of Clean Water Act reauthorization. During the course of these hearings, the Subcommittee received testimony regarding secondary treatment requirements.

H.R. 1943 is identical to section 309(a) of H.R. 961, the Clean Water Amendments of 1995, which passed the Subcommittee by a vote of 19 to 5, passed the full Committee by a vote of 42 to 16, and passed the House on May 16, 1995, by vote of 240 to 185. The full Committee defeated an amendment to delete the San Diego provision and other secondary treatment provisions from H.R. 961 by a vote of 13 to 41. The House defeated a similar Floor amendment by a vote of 154 to 267.

COMMITTEE CONSIDERATION

Clause 2(l)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

1. One amendment was offered during consideration of the bill. The amendment, offered by Mr. Filner, would have placed additional conditions on the secondary treatment waiver that treatment achieve a minimum removal of 80% TSS (on a monthly basis) and 58% BOD (on an annual basis). The amendment was defeated by a vote of 21 to 32.

AYE	NAY
Borski	Bachus
Brown	Baker
Clement	Bateman
Clyburn	Blute
Costello	Boehlert
Cramer	Clinger
Danner	Coble
DeFazio	Duncan
Filner	Ehlers
Johnson	Ewing
Lipinski	Fowler
McCarthy	Franks
Menendez	Gilchrest
Mineta	Horn
Nadler	Hutchinson
Oberstar	Kelly
Parker	Kim
Poshard	LaHood
Rahall	Latham
Tucker	Latourette
Wise	Martini
	Mica
	Molinari
	Petri
	Quinn
	Seastrand
	Tate
	Wamp
	Weller
	Young
	Zeliff
	Shuster

2. The second rollcall vote was on reporting of the bill. The bill was reported favorably by a vote of 35 to 21.

AYE	NAY
Bachus	Barcia
Baker	Borski
Bateman	Brown
Blute	Clement
Boehlert	Clyburn
Clinger	Costello
Coble	Cramer
Ehlers	Danner
Emerson	DeFazio
Ewing	Johnson
Filner	Lipinski
Fowler	McCarthy
Franks	Menendez
Gilchrest	Mineta
Hayes	Nadler
Horn	Oberstar
Hutchinson	Poshard
Kelly	Rahall
Kim	Traficant
LaHood	Tucker
Latham	Wise
Latourette	
Martini	
Mica	
Molinari	
Parker	
Petri	
Quinn	
Seastrand	
Tate	
Wamp	
Weller	
Young	
Zeliff	
Shuster	

COMMITTEE OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no specific oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursuant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Transportation and Infra-

structure has received no findings and recommendations from the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

Clause 2(l)(3)(B) of rule XI requires each committee report that accompanies a measure providing new budget authority, new spending authority, or new credit authority or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974 and, when practicable with respect to estimates of one budget authority, a comparison of the total estimated funding levels of the relevant program (or programs) to appropriate levels under current law.

Clause 7(a) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, where practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(C) of rule XI requires each committee report to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. The following is the Congressional Budget Office cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1943, the San Diego Coastal Corrections Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on July 12, 1995. We estimate that enacting this bill would not have any significant impact on the federal budget. The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply. The bill could relieve San Diego from having to make some expenditures, but its effect on the city's budget is uncertain.

H.R. 1943 would amend the Clean Water Act to permanently exempt San Diego's sewage treatment facility from meeting the requirements of a secondary sewage treatment facility. Secondary treatment must remove at least 85 percent of the solids from sewage, while the San Diego facility removes slightly less. Estimates of the cost to upgrade the San Diego facility for secondary treatment range from less than one billion dollars to several billion dollars.

In April of this year, San Diego applied to the Environmental Protection Agency (EPA) for a five-year renewable waiver from re-

quirements for secondary sewage treatment. In June, the agency gave preliminary approval to the city's waiver request. If the agency gives final approval to the waiver request, the city would be exempted from requirements for secondary sewage treatment for five years. At that time, the city could reapply for another five-year waiver. The city estimates that its recent waiver application cost about $1 million to prepare. Enacting H.R. 1943 could save the city the costs of preparing future waiver applications because the bill would grant a permanent waiver. The bill could save the city the substantial costs of moodifying its sewage treatment plant if EPA were to deny the city's pending waiver request or possible future waiver requests.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

INFLATIONARY IMPACT STATEMENT

Clause 2(l)(4) of rule XI requires each committee report on a bill or joint resolution of a public character to include an analytical statement describing what impact enactment of the measure would have on prices and costs in the operation of the national economy. The Committee has determined that H.R. 1943 has no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 304 OF THE FEDERAL WATER POLLUTION CONTROL ACT

INFORMATION AND GUIDELINES

SEC. 304. (a) * * *

* * * * * * *

(d)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after enactment of this title (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

* * * * * * *

(5) COASTAL DISCHARGES.—For purposes of this subsection, any municipal wastewater treatment facility shall be deemed the equivalent of a secondary treatment facility if each of the following requirements is met:

(A) The facility employs chemically enhanced primary treatment.

(B) The facility, on the date of the enactment of this paragraph, discharges through an ocean outfall into an open marine environment greater than 4 miles offshore into a depth greater than 300 feet.

(C) The facility's discharge is in compliance with all local and State water quality standards for the receiving waters.

(D) The facility's discharge will be subject to an ocean monitoring program acceptable to relevant Federal and State regulatory agencies.

* * * * * * *

DISSENTING VIEWS

H.R. 1943 is an unnecessary bill. Born of the desire to create a headline-grabbing topic for Corrections Day, H.R. 1943 changes current law, but it corrects nothing. In fact, it creates significant problems—including the dangerous precedents of (1) providing a virtual carte blanche to pollute through a procedure devoid of any thoughtful consideration, and (2) excluding from the process those who at the local level are most directly affected by the legislation.

The Republican leadership latched onto San Diego as the ideal poster child to kick off Corrections Day, notwithstanding the fact that any so-called "obviously dumb" requirement that previously existed was corrected last year when both Houses of Congress passed, and President Clinton signed into law, the Ocean Pollution Reduction Act (P.L. 103–431). When the Subcommittee on Rules and Organization of the House conducted a hearing on creating a corrections day, testimony on San Diego did not even mention the fact that last year's legislation provided San Diego relief from the very secondary treatment requirement that H.R. 1943 supposedly would correct.

I. BACKGROUND: SAN DIEGO WILL RECEIVE A WAIVER WITHOUT H.R. 1943

Last year's law allowed San Diego—San Diego alone—to apply for a waiver of the Clean Water Act's secondary treatment requirements for its Point Loma wastewater treatment plant. Pursuant to that law, San Diego submitted its application on April 26, 1995, and on June 12, 1995, the Environmental Protection Agency (EPA) announced its preliminary determination to approve the waiver. By all accounts, next month (August, 1995) EPA will issue a proposed permit, including the waiver that San Diego is seeking, and soon thereafter EPA will grant San Diego its waiver.

Notwithstanding the fact that San Diego gets what it wants through the waiver that was authorized last year, a second San Diego waiver provision was included in Section 309(a) of H.R. 961, the Clean Water Amendments of 1995. That bill passed the House on May 18, 1995.

Even though San Diego's problem already has been fixed twice (through last year's bill and this year's Clean Water Act amendments), on June 28, 1995, H.R. 1943 was introduced.

II. H.R. 1943 IS GROSSLY UNFAIR TO THE MAJORITY OF OTHER COMMUNITIES IN THIS COUNTRY

H.R. 1943 is a great injustice for the majority of other communities in this country. There simply is no justifiable explanation for carving the San Diego provision from the Clean Water bill that passed the House so that it can receive expedited and high profile consideration, while not expediting consideration of other Clean

Water provisions that are more pressing and impact many more communities.

Why is it that San Diego, which will receive a waiver from secondary treatment with no further legislation, is getting a bill considered separately, and yet thousands of communities that are in technical violation of the law for failure to have stormwater permits cannot receive separate legislative attention?

Why is it that the more than one-thousand cities looking for approval of EPA's Combined Sewer Overflow Policy cannot receive separate legislative action? Why not a Combined Sewer Overflow provision that would help a lot of cities and is truly noncontroversial, having the support of every stakeholder group?

None of these communities will receive any assistance by the passage of H.R. 1943. Thousands of communities that need legislation are being told that they must wait for the larger Clean Water bill to be considered. Why San Diego, and why not Philadelphia, New York, Chicago, Boston, Detroit, and the other cities that face costs of more than $40 billion to correct their combined sewer overflow problems? Yet the one city which needs no further legislative action to receive the relief which it wants is getting a special bill, just for it. The thousands of other communities can wait.

This is another example of the "haves" getting what they want, and the "have nots" being left behind. The "have nots" are the communities which most of us represent. Yet, it is San Diego that is getting singled out for special treatment—special treatment for the third time in less than a year.

III. H.R. 1943'S CHANGES TO LAST YEAR'S ENACTED BILL ARE BAD POLICY, SCIENTIFICALLY UNSOUND, AND UNNECESSARY

H.R. 1943 differs from last year's enacted bill, and from the commitments made by San Diego in its recent waiver application, in three key respects.

A. *H.R. 1943 Would Authorize Far Less Treatment than San Diego Currently Is Achieving*: H.R. 1943 rejects the minimum standards that were in last year's law and are an integral part of San Diego's recent waiver application. H.R. 1943 would allow San Diego to do less than the commitments it made last year when special legislation was passed to allow for the waiver, less than it agreed to this year in its waiver application, less than it has proven it is capable of consistently doing, and less than it is currently doing. This is directly at odds with the desires of the American public, who are opposed to allowing dischargers to do less than they currently are doing to control pollution.

The present secondary treatment standards, which virtually every municipality has to meet, are 85% removal of biological oxygen demand (BOD) and 85% removal of total suspended solids (TSS).

Last year's enacted bill allowed San Diego to seek a waiver from the secondary requirement of 85% removal and instead achieve "enhanced primary" treatment. A critical element of last year's bill was that "enhanced primary" treatment was required to remove, at a minimum, 58% BOD (on an annual average) and 80% TSS (on a monthly average). Significantly, thee percentages were based on what San Diego represented that it could consistently meet. And,

these percentages have proven realistic—San Diego reported that it consistently met or exceeded them in 1994.

Like last year's enacted bill, H.R. 1943 conditions the waiver of secondary treatment standards on San Diego's implementation of "enhanced primary" treatment. But, unlike last year's law, H.R. 1943 is devoid of any minimum level of treatment required to satisfy the undefined requirement for "enhanced primary" treatment.

The only hint of a baseline standard in H.R. 1943 is derived from the term "primary". Although this word is not defined in the Clean Water Act generally or its regulations, Section 301(h) of the Clean Water Act (relating to waivers of secondary treatment requirements) states that for limited purposes "'primary or equivalent treatment' means treatment * * * adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids. * * *" So, H.R. 1943 presumably would require removal of some unspecified amount over 30% of BOD and TSS, which could be far less removal that San Diego is consistently achieving today.

The only "safeguard" in this bill is that the effluent has to be "in compliance with all local and state water quality standards for the receiving waters." However, that provision is a fraud, since the discharge would be 4 miles out in the ocean, where no state or local water quality standards apply. State jurisdiction over ocean water extends only 3 miles from shore.

The elimination of the requirement for removal of 58% BOD and 80% TSS, to a level of treatment of as low as just over 30% removal of each, could authorize the discharge of sewage that is very nearly raw—sewage that no one has agreed would be harmless. As characterized during the debate on the bill in Committee, it could allow a "freefall" to as little as 30% removal. This cannot fairly be characterized as just a little correction. It is a major loophole that could allow for an enormous potential drop in removal and in water quality, one that San Diego has not even said it wants. It is the wholesale abandonment of the Clean Water Act program, and contrary to San Diego's current program and to the interests of its citizens and visitors.

Most remarkable is the fact that the Committee rejected, on a party line vote, an amendment offered by Congressman Filner to add to H.R. 1943 the 58%/80% baseline removal requirement from last year's bill and San Diego's waiver application.

In support of this amendment, Representative Filner asserted that while he did not believe that San Diego would increase pollution in its discharge beyond the baseline levels in last year's enacted bill, he considered it appropriate to include those baselines in H.R. 1943. If San Diego has no intention of ever reducing its wastewater treatment, it should not be opposed to minimum requirements.

The importance of minimum treatment requirements also was emphasized by Congressman Horn during floor debate last year on the San Diego relief bill, the Ocean Pollution Reduction Act, which did contain the 58%/80% baseline removal requirement:

> Mr. Speaker, under my reservation of objection I want to say that this does assure environmental protection. It

> * * * *requires meeting certain minimum levels of treatment* [emphasis added].

It is just plain common sense that the baselines should be included in H.R. 1943. It would give both the San Diego citizenry, and the tourism industry and other industries that depend on clean water, some assurance that water pollution will not dramatically escalate in the future. And, from a scientific standpoint, it is advisable to limit the amount of pollution that may be discharged to a level that will not threaten human health or water quality. The Filner amendment also would have avoided the bad precedent of H.R. 1943, which authorizes pollution at levels that no one has claimed are safe.

At Committee markup, the rationales offered for opposing the Filner amendment were that it constituted "micromanagement" and that San Diego was opposed.

The "micromanagement" argument is disingenuous. In fact, H.R. 1943 itself would result in micromanagement by Congress, since the only way to modify the waiver (for instance, in response to new information that it was causing serious harm) would be by an Act of Congress. EPA and California would be powerless to modify the waiver, as would the City and citizens of San Diego, since H.R. 1943 cuts the public out of the process (see section C below).

Nor is reliance on purported opposition by the City of San Diego very compelling. Presumably this rationale refers to support of the bill from the Mayor of San Diego. But it is inconceivable that the citizenry and tourism fishing industries in San Diego would actually support relaxing standards to levels of the 19th century. While there is significant support in San Diego for relief from the secondary treatment requirement, there is no indication of any support for reducing the level of treatment from the levels already achieved.

B. *H.R. 1943 Would Eliminate the Waste Water Reclamation Program Included in Last Year's Bill and in San Diego's Waiver Application:* H.R. 1943 eliminates the requirement in last year's bill that San Diego make a commitment to implement a waste water reclamation program. Like the minimum standards in last year's bill, the reclamation provision reflects precisely what San Diego last year proposed and agreed that it could and would do as a condition of not meeting secondary treatment standards. No more, no less. And, in its June 12, 1995, waiver application San Diego made its commitment to conduct a waste water reclamation program. H.R. 1943 would relieve San Diego of this commitment.

San Diego proposed the reclamation component because reclamation was central to reducing the total volume of waste water discharged. And, reducing the total volume was part of the City's argument that the lower treatment standards would not be harmful: less total effluent would mean less pollution.

Under H.R. 1943, San Diego would get the benefit of lower treatment standards—even lower than those agreed to last year and currently being met—but would no longer do the reclamation that was part of the package.

C. *H.R. 1943 Legislatively Grants a Permanent Waiver With No Mechanism for Periodic Review to Ensure that the Waiver is Appropriate as Conditions Change Over Time:* Last year's enacted bill au-

thorized San Diego to apply for and receive a waiver under the same terms as all other communities that have permits with waivers. Specifically, it required San Diego to apply to EPA for a waiver, and in that application to demonstrate that certain conditions would be met, such as that discharges under the waiver would not result in additional requirements on any other pollution source, and the discharge allows for the maintenance of a balance of indigenous populations of fish, shellfish and wildlife, and allows recreational activities in and on the water (see Clean Water Act Section 301(h)(1)–(9)).

In contrast, in H.R. 1943 Congress grants the waiver, without consideration of the criteria in Section 301(h) of the Clean Water Act that every other waiver recipient had to meet. EPA and California play no role in the process of ensuring that San Diego gets a waiver.

Unfortunately, EPA and California are not the only entities that H.R. 1943 would exclude from the waiver process. H.R. 1943 virtually eliminates the effectiveness of the requirement for public comment on the waiver—public comment from the very people that will have to live with the effects of the bill forever.

In a letter dated July 11, 1995, to Chairman Shuster, Mr. Robert Perciasepe, Assistant Administrator for Water at the United States Environmental Protection Agency, noted the importance of public comment:

> Public review of EPA's approval will begin in August, and is an important part of retaining public accountability in the nation's water pollution control program. It will allow the citizens of San Diego to review the modified discharge plans, assuring the maintenance of water quality necessary to protect public water supplies and allow for recreational activities, tourism, etc. Ongoing public review is particularly important in San Diego, where there is a history of serious public concerns about sewage discharges.

H.R. 1943 would set a dangerous precedent of Washington eliminating the views of the local community from decisions with local impacts.

In addition, under H.R. 1943 San Diego would be forever immune from the periodic review provisions of the Clean Water Act that apply to every other waiver recipient. Under current law, waiver recipients must periodically apply to renew their waivers as a part of permit renewal. Currently, permit renewal is every 5 years, but under the Clean Water Amendments that passed the House it would be extended to every 10 years. This process allows EPA to consider whether any changes in conditions or new information cause the waiver of secondary treatment standards no longer to be safe. As in the initial waiver application process, the public is given an opportunity to comment on renewal.

The importance of Agency review of waiver applications has been widely recognized.

During floor debate on last year's San Diego waiver bill Congressman Horn noted the importance of requiring San Diego to demonstrate to EPA that the waiver is appropriate and will not be harmful:

> Mr. Speaker, under my reservation of objection I want to say that this does assure environmental protection. It is simply providing for the possibility of an exemption. This legislation allows the EPA to grant that exemption. They have to apply to EPA. * * *

Also noteworthy, and consistent with the concerns that Congressman Horn raised regarding the last year's San Diego waiver bill, the amendment that Mr. Horn offered to this year's Clean Water bill, to provide Los Angeles relief from secondary treatment requirement, requires Los Angeles to apply to EPA for a waiver: it does not legislatively grant a permanent waiver.

In his July 11, 1995, letter to Chairman Shuster, Assistant Administrator Perciasepe noted the importance of periodic review of waiver decisions:

> The current waiver process is based on a scientific review of available data. The special legislation proposed for San Diego would provide for a blanket exemption from secondary treatment, even if changed circumstances or evolving science raise reasonable questions about the continued wisdom of the waiver. This plan to ignore new data appears to conflict with the National Research Council's seminal report, "Managing Wastewater in Coastal Urban Areas." That report specifically recommended that "[m]anagement systems should be flexible so that they may be changed as needed to respond to new information about environmental quality and the performance of existing management systems." The scientific and public scrutiny involved in the reapplication process is similar to the scrutiny that every discharger in the country must undergo.

IV. CURRENTLY THERE IS NOTHING TO CORRECT, BUT THERE WILL BE IF H.R. 1943 BECOMES LAW

A. *There is nothing to correct:* As noted above, San Diego will receive its waiver without H.R. 1943. Since San Diego got relief from secondary treatment requirements of the Clean Water Act under legislation enacted last year, and on June 12, 1995, EPA publicly announced its tentative approval of the City's waiver application, H.R. 1943 at best is moot.

In addition, H.R. 961, the Clean Water Amendments of 1995, which passed the House on May 18, 1995, contains a provision (Section 309(a)) that is identical to H.R. 1943. There is no reason whatsoever to carve this provision out of legislation that is moving through the legislative process.

It is ironic that San Diego legislation is being used to kick off Corrections Day, in view of the fact that Corrections Day, and this so-called "correction" in particular, has been billed as a mechanism for correcting "dumb" impacts of the "one size fits all" approach. The San Diego situation is anything but an example of "one size fits all." In fact, as a result of last year's enacted bill, San Diego is in a class all by itself.

It is sometimes claimed that the National Academy of Sciences supports the waiver. This is not correct. The National Academy of

Sciences (NAS) made it quite clear when they testified before this Committee that they did not reach any conclusion on the question of whether a secondary waiver would be justified or harmful in the case of San Diego. Nor did NAS take a position on the merits of any legislation that would provide for a waiver for San Diego.

The San Diego bill that last year was enacted into law has been criticized on only very limited grounds. Messrs. Filner and Bilbray testified before the Subcommittee on Water Resources and Environment during hearings on H.R. 961, the Clean Water Amendments of 1995. Mr. Bilbray also testified at the Corrections Day joint hearing before the Subcommittee on Rules and Organization of the House and the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs.

Based on these hearings, we are aware of *only one* criticism having been made about San Diego's current obligations under the Clean Water Act and the Ocean Pollution Reduction Act. That is the burden of applying for the waiver, and of having to reapply periodically (every 5 years under current law, but possibly every 10 years under H.R. 961).

The complaint about the cost of applying for a waiver is not compelling. San Diego has already expended the sums necessary for the initial application. So, what is at issue is the cost of reapplying every five or ten years. In view of the fact that H.R. 1943 already requires that the City implement a monitoring program, the data to support the application presumably already would have been gathered. The only additional cost is the cost of interpreting the data and presenting it in the application. Most of the cost of periodic reapplication and review is the cost of monitoring, and that cost by every other waiver recipient in the country. And, as discussed above, there are sound reasons for periodically revisiting waiver decisions in light of changed conditions and new scientific information. San Diego simply has not made the case for more special treatment in this regard.

B. *There will be many things to correct if H.R. 1943 becomes law:* H.R. 1943, if enacted into law, would create many problems, including the following:

(1) H.R. 1943 could allow San Diego to significantly retreat from its current treatment program, under which it consistently achieves 80% removal of total suspended solids (TSS) and 58% removal of biological oxygen demand (BOD). the bill could authorize as little as just slightly over 30% removal for each—basically raw sewage, minus the solids.

(2) Short of new federal legislation, once San Diego qualifies for this automatic legislative waiver, there is no mechanism for reassessing its wisdom in light of new conditions or new scientific information.

(3) The public, including the citizens of San Diego, are cut out of the waiver process entirely.

(4) The bill reflects very badly on the priorities of this Congress: it sends a strong signal to the communities that most of us represent that very real problems facing them are less important than addressing a problem regarding one community that was cured last year.

In keeping with the Corrections Day theme of common sense, one would expect the kickoff Corrections Day bill to reflect some degree of common sense. It makes little sense to claim to address a problem that does not even exist. It makes even less sense to create more problems than you solve.

San Diego secondary treatment is not what needs "correcting." It is the priorities of this House that need correcting.

NORMAN Y. MINETA.
BOB BORSKI.

○